
HOUSE BILL 2603

State of Washington

60th Legislature

2008 Regular Session

By Representatives Chandler, Hinkle, Haler, Rodne, Anderson, Bailey, Hailey, Newhouse, Kristiansen, McDonald, and Warnick

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1 AN ACT Relating to investment of public employee retirement funds
2 in certain entities with business operations in Iran; amending RCW
3 43.33A.110; adding new sections to chapter 43.33A RCW; creating a new
4 section; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
7 securities and exchange commission has determined that business
8 activities in foreign states such as Iran sponsoring terrorism and that
9 are subject to sanctions by the United States may materially harm the
10 share value of foreign companies. Shares in these foreign companies
11 may be held in the portfolio of public retirement systems in this
12 state.

13 (2) The legislature finds that publicly traded companies in the
14 United States are substantially restricted in doing business in or with
15 foreign states such as Iran that the United States department of state
16 has identified as sponsoring terrorism.

17 (3) The legislature further finds that public retirement system
18 funds in this state currently invest on behalf of retirement system
19 members and the citizens of Washington in publicly traded foreign

1 companies that may be at risk due to business ties with foreign states
2 such as Iran that sponsor terrorism and are involved in the
3 proliferation of weapons of mass destruction, including the supplying
4 of improvised explosive devices and other weapons to militants in Iraq
5 for use against coalition troops.

6 (4) The legislature further finds that investments in publicly
7 traded foreign companies that have business operations in or with
8 foreign states such as Iran are liable for sanctions under United
9 States law and risk the pensions of the public employees of this state.
10 The legislature finds that Public Law 104-172, as renewed and amended
11 in 2001 and 2006, provides for sanctions to be imposed on any entity
12 that has invested at least twenty million dollars in any year since
13 1996 to develop petroleum or natural resources of Iran.

14 (5) The legislature therefore declares that excluding companies
15 with business activities in foreign states such as Iran that sponsor
16 terrorism and divesting from public portfolios will help protect the
17 public retirement systems in this state from investment losses related
18 to these business activities and may improve the investment performance
19 of the public retirement systems.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply
21 throughout sections 1 through 8 of this act unless the context clearly
22 requires otherwise.

23 (1) "Board" means the state investment board established in this
24 chapter.

25 (2) "Business operations" means maintaining, selling, or leasing
26 equipment, facilities, personnel, or any other apparatus of business or
27 commerce in Iran, including the ownership or possession of real or
28 personal property located in Iran.

29 (3) "Company" means a sole proprietorship, organization,
30 association, corporation, partnership, or other entity, its subsidiary
31 or affiliate that exists for profit-making purposes or to otherwise
32 secure economic advantage. "Company" also means a company owned or
33 controlled, either directly or indirectly, by the government of Iran,
34 that is established or organized under the laws of or has its principal
35 place of business in the Islamic Republic of Iran.

36 (4) "Government of Iran" means the government of Iran or its

1 instrumentalities or political subdivisions. "Government of Iran" also
2 means an individual, company, or public agency located in Iran that
3 provides material or financial support to the Islam Republic of Iran.

4 (5) "Invest" or "investment" means the purchase, ownership, or
5 control of stock of a company, association, or corporation, the capital
6 stock of a mutual water company or corporation, bonds issued by the
7 government or a political subdivision of Iran, corporate bonds or other
8 debt instruments issued by a company, or the commitment of funds or
9 other assets to a company, including a loan or extension of credit to
10 that company.

11 (6) "Iran" means the Islamic Republic of Iran or a territory under
12 the administration or control of Iran.

13 (7) "Military equipment" means weapons, arms, or military defense
14 supplies.

15 (8) "Public employee retirement funds" means funds administered by
16 the department of retirement systems and the law enforcement officers'
17 and firefighters' plan 2 board.

18 (9) "Substantial action" means a refusal to do business with the
19 government of Iran, curtailing business in Iran, or selling company
20 assets, equipment, or real and personal property located in Iran.

21 NEW SECTION. **Sec. 3.** (1) The board shall not invest public
22 employee retirement funds in a company that has business operations in
23 Iran as identified by the board through, as the board deems
24 appropriate, publicly available information, including but not limited
25 to information provided by government entities and nongovernmental
26 organizations, that meets either of the following criteria:

27 (a) The company is invested in or engaged in business operations
28 with entities in the defense or nuclear sectors of Iran, or is invested
29 in or engaged in business operations with entities involved in the
30 development of petroleum or natural gas resources of Iran, and that
31 company is subject to sanctions under Public Law 104-172, as renewed
32 and amended in 2001 and 2006.

33 (b) The company has demonstrated complicity with an Iranian
34 organization that has been named as a terrorist organization by the
35 United States government before the effective date of this act.

36 (2) On or before January 1, 2009, the board shall determine which
37 companies are subject to divestment.

1 (3) After the determination described in subsection (2) of this
2 section, the board shall determine, by the next applicable board
3 meeting, if a company meets the criteria described in subsection (1) of
4 this section. If the board plans to invest or has investments in a
5 company that meets the criteria described in subsection (1) of this
6 section, that planned or existing investment shall be subject to
7 section 4 (1) and (2) of this act.

8 (4) Investments of the board in a company that does not meet the
9 criteria described in subsection (1) of this section are not subject to
10 section 4 of this act if the company does not subsequently meet the
11 criteria described in subsection (1) of this section. The board shall
12 identify the reasons why that company does not satisfy the criteria
13 described in subsection (1) of this section in the report to the
14 legislature required by section 5 of this act.

15 (5) Notwithstanding subsections (3) and (4) of this section, if the
16 board's investment in a company described in subsection (1) of this
17 section is limited to investment via an externally and actively managed
18 commingled fund, the board shall contact the fund manager in writing
19 and request that the fund remove the company from the fund as described
20 in section 4 of this act. On or before January 1, 2009, if the fund
21 manager creates a fund or account devoid of companies described in
22 subsection (1) of this section, the transfer of board investments from
23 the prior fund or account to the fund or account devoid of companies
24 with business operations in Iran shall be deemed to satisfy subsection
25 (1) of this section.

26 (6) If the board's investment in a company described in subsection
27 (1) of this section is limited to an alternative fund or account, the
28 alternative fund or account manager creates an actively managed,
29 commingled fund that excludes companies described in subsection (1) of
30 this section, and the new fund or account is deemed to be financially
31 equivalent to the existing fund or account, the transfer of board
32 investments from the existing fund or account to the new fund or
33 account shall be deemed to satisfy section 4 of this act. If the board
34 determines that the new fund or account is not financially equivalent
35 to the existing fund, the board shall include the reasons for that
36 determination in the report required in section 5 of this act.

37 (7) The board shall make a good faith effort to identify any
38 private equity investments that involve companies described in

1 subsection (1) of this section, or are linked to the government of
2 Iran. If the board determines that a private equity investment clearly
3 involves a company described in subsection (1) of this section, or is
4 linked to the government of Iran, the board shall consider, at its
5 discretion, if those private equity investments shall be subject to
6 section 4 of this act. If the board determines that a private equity
7 investment clearly involves a company described in subsection (1) of
8 this section, or is linked to the government of Iran and the board does
9 not take action as described in section 4 of this act, the board shall
10 include the reasons for its decision in the report required in section
11 5 of this act.

12 (8) Except as described in subsections (4) and (5) of this section,
13 the board, in its capacity as shareholder or investor, shall notify any
14 company described in subsection (3) of this section that the company is
15 subject to subsection (1) of this section and permit the company to
16 respond to the board. The board shall request that the company take
17 substantial action no later than ninety days from the date the board
18 notified the company under this subsection. If the board determines
19 that a company has taken substantial action or has made sufficient
20 progress toward substantial action before the expiration of that
21 ninety-day period, that company shall not be subject to section 4 of
22 this act. The board shall, at intervals not to exceed ninety days,
23 continue to monitor and review the progress of the company until that
24 company has taken substantial action in Iran. A company that fails to
25 complete substantial action within one year from the date of the
26 initial notice by the board is subject to section 4 of this act.

27 NEW SECTION. **Sec. 4.** If a company described in section 3(3) of
28 this act fails to complete substantial action by the time described in
29 section 3(8) of this act, the board shall take the following actions:

30 (1) The board shall not make additional or new investments or renew
31 existing investments in that company.

32 (2) The board shall liquidate the investments of the board in that
33 company no later than eighteen months after this section applies to
34 that company. The board shall liquidate those investments in a manner
35 to address the need for companies to take substantial action in Iran
36 and consistent with the board's fiduciary responsibilities as described
37 in RCW 43.33A.140.

1 NEW SECTION. **Sec. 5.** On or before July 1, 2009, and every year
2 thereafter, the board shall submit a report to the governor and
3 legislature. The report shall include the following:

4 (1) A list of investments the board has in companies with business
5 operations that satisfy the criteria in section 3(1) of this act,
6 including, but not limited to, the issuer, by name, of the stock,
7 bonds, securities, and other evidence of indebtedness;

8 (2) A detailed summary of the business operations a company
9 described in subsection (1) of this section has in Iran;

10 (3) Whether the board has reduced its investments in a company that
11 satisfies the criteria in section 3(1) of this act;

12 (4) If the board has not completely reduced its investments in a
13 company that satisfies the criteria in section 3(1) of this act, when
14 the board anticipates that it will reduce all investments in that
15 company or the reasons why a sale or transfer of investments is
16 inconsistent with the fiduciary responsibilities of the board as
17 described in RCW 43.33A.140;

18 (5) Any information described in section 3 (3) and (4) of this act;

19 (6) A detailed summary of investments that were transferred to
20 funds or accounts devoid of companies with business operations in Iran
21 as described in section 3(5) of this act; and

22 (7) An annual calculation of any costs or investment losses or
23 other financial results incurred in compliance with the provisions of
24 section 4 of this act.

25 NEW SECTION. **Sec. 6.** Nothing in sections 3 through 5, 7, and 8 of
26 this act shall require the board to take action described in sections
27 3 through 5, 7, and 8 of this act unless the board determines, in good
28 faith, that the actions described in sections 3 through 5, 7, and 8 of
29 this act are consistent with the fiduciary responsibilities of the
30 board as described in RCW 43.33A.140.

31 NEW SECTION. **Sec. 7.** Section 5 of this act shall not apply to any
32 of the following:

33 (1) Investments in a company that is primarily engaged in supplying
34 goods or services intended to relieve human suffering in Iran;

35 (2) Investments in a company with a principal purpose of promoting

1 health, education, or journalistic, religious, or welfare activities in
2 Iran; and

3 (3) Investments in a company that is authorized by the federal
4 government to have business operations in Iran.

5 NEW SECTION. **Sec. 8.** Present, future, and former members of the
6 board, jointly and individually, state officers and employees, and
7 research firms and investment managers under contract with the board
8 shall be indemnified from the state general fund and held harmless by
9 the state of Washington from all claims, demands, suits, actions,
10 damages, judgments, costs, charges and expenses, including court costs
11 and attorneys' fees, and against all liability, losses, and damages of
12 any nature whatsoever that those present, future, or former board
13 members, officers, employees, research firms, or investment managers
14 shall or may at any time sustain by reason of any decision to restrict,
15 reduce, or eliminate investments under sections 3 through 7 of this
16 act.

17 **Sec. 9.** RCW 43.33A.110 and 1994 c 154 s 310 are each amended to
18 read as follows:

19 The state investment board may make appropriate rules and
20 regulations for the performance of its duties. The board shall,
21 consistent with sections 2 through 8 of this act, establish investment
22 policies and procedures designed exclusively to maximize return at a
23 prudent level of risk. However, in the case of the department of labor
24 and industries' accident, medical aid, and reserve funds, the board
25 shall establish investment policies and procedures designed to attempt
26 to limit fluctuations in industrial insurance premiums and, subject to
27 this purpose, to maximize return at a prudent level of risk. The board
28 shall adopt rules to ensure that its members perform their functions in
29 compliance with chapter 42.52 RCW. Rules adopted by the board shall be
30 adopted pursuant to chapter 34.05 RCW.

31 NEW SECTION. **Sec. 10.** Sections 2 through 8 of this act are each
32 added to chapter 43.33A RCW.

1 NEW SECTION. **Sec. 11.** This act takes effect July 1, 2008.

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